In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 520

JULIAN LENTIN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court (R. 24–28) is reported at 23 T. C. 112. The opinion of the Court of Appeals (Pet. 3a–10a) is not officially reported.

JURISDICTION

The judgment of the Court of Appeals was entered on October 14, 1955. The petition for a writ of certiorari was filed on November 14, 1955. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

Whether the doctrine of collateral estoppel precluded relitigation in the Tax Court of the question whether the taxpayer had knowingly and willfully violated the Emergency Price Control Act of 1942, as amended, where that question had been determined adversely to the taxpayer by both the District Court and the Court of Appeals in a prior civil action between the taxpayer and the Office of Price Administration.

STATUTE INVOLVED

Internal Revenue Code of 1939:

> SEC. 23. DEDUCTIONS FROM GROSS INCOME.
>
> In computing net income there shall be allowed as deductions:
>
> (a) *Expenses.*—
>
> (1) [As amended by Section 121 (a) of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Trade or business expenses.*—
>
> (A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; * * *
>
> * * * * * *
>
> (26 U. S. C. 1952 ed., Sec. 23.)

STATEMENT

The facts as stipulated (R. 22–23) and found by the Tax Court (R. 25–26) may be summarized as follows:

In a civil action entitled *Bowles, Administrator, Office of Price Administration* v. *Julian Lentin d. b. a. J. Lentin Lumber Co.* (N. D. Ill.), decided January 12, 1945, affirmed,*Bowles* v. *Lentin,* 151 F. 2d 615 (C. A. 7th), certiorari denied, 327 U. S. 805, rehearing denied, 328 U. S. 877, it was determined that the taxpayer had knowingly and willfully purchased and sold lumber at overceiling prices in violation of the Emergency Price Control Act of 1942, as amended. Judgment was accordingly entered against him for twice the amount of the overcharges. Having paid his share of the judgment in 1946, the taxpayer claimed the amount of that payment as a business expense deduction in his income tax return for that year. In a notice of deficiency, the Commissioner of Internal Revenue disallowed this deduction (R. 23, 25–26).

The taxpayer filed a petition for redetermination in the Tax Court alleging (R. 4) that he was not a willful violator of the Emergency Price Control Act of 1942, as amended. The Commissioner's answer, in addition to denying that allegation (R. 12), raised the defense of collateral estoppel, pointing out that the same issue had been litigated and decided against the taxpayer in the earlier proceeding (R. 13–15). It was stipulated that the record in the O. P. A. case should be considered in evidence in the Tax Court proceeding; that the witnesses in the O. P. A. case were available; and that, if those

witnesses testified in the Tax Court proceeding, their testimony would be the same as in the O. P. A. case. (R. 22). The case was submitted to the Tax Court on the stipulation (R. 35).

Sustaining the Commissioner's position, the Tax Court held that the doctrine of collateral estoppel precluded the taxpayer from relitigating the issue whether he had knowingly or willfully violated the Emergency Price Control Act of 1942, as amended (R. 26–28). The Court of Appeals affirmed (Pet. 4a–10a).

ARGUMENT

This case presents a situation clearly calling for application of the doctrine of collateral estoppel as that doctrine has been enunciated by this Court, with particular reference to tax cases, in *Commissioner* v. *Sunnen,* 333 U. S. 591. Contrary to the taxpayer's contention (Pet. 4–7), the decision below is in accordance with settled principles, there is no conflict of decisions, and no novel and important question is involved.

It is well settled that the amounts of penalties imposed for willful violations of the Emergency Price Control Act of 1942, as amended, are not to be allowed as tax deductions since their allowance would have the effect of partially remitting the penalties, thus frustrating the policy of that Act. *Commissioner* v. *Pacific Mills,* 207 F. 2d 177 (C. A. 1st); *National Brass Works* v. *Com-*

missioner, 182 F. 2d 526, 530–531 (C. A. 9th); *George Schaefer & Sons* v. *Commissioner,* 209 F. 2d 440 (C. A. 2d); *Henry Watterson Hotel Co.* v. *Commissioner,* 15 T. C. 902, affirmed, *per curiam,* 194 F. 2d 539 (C. A. 6th). In seeking to deduct the amount of penalties which he was required to pay pursuant to a judicial determination that he had willfully violated the Emergency Price Control Act of 1942, as amended, the taxpayer in the instant case would relitigate in the Tax Court the question whether his violation was willful. That same question, however, was actually litigated and decided on the merits by both the District Court and the Court of Appeals in the prior civil action between the taxpayer and the Administrator of the Office of Price Administration. As officers of the Government, the Administrator of the Office of Price Administration and the Commissioner of Internal Revenue are in privity (*Sunshine Coal Co.* v. *Adkins,* 310 U. S. 381; *United States* v. *Willard Tablet Co.,* 141 F. 2d 141 (C. A. 7th); *Utica Knitting Co.* v. *Shaughnessy,* 100 F. Supp. 245 (N. D. N. Y)), and there has been no change in the law which would make the doctrine of collateral estoppel inapplicable.

Relying upon certain language in the opinion of the Second Circuit in *Jerry Rossman Corp.* v. *Commissioner,* 175 F. 2d 711, the taxpayer argues (Pet. 4–7) that the Tax Court had an independent duty to determine whether allowance of the de-

duction claimed would frustrate the policy of the Emergency Price Control Act of 1942, as amended, i. e., whether disallowance of that deduction would deter future violators. The *Jerry Rossman Corp.* case does not support the taxpayer's position. In that case the Second Circuit—which in *George Schaefer & Sons* v. *Commissioner, supra,* has expressed its agreement with other circuits that allowing deduction of the amount of penalties imposed for willful violations of the Emergency Price Control Act of 1942, as amended, would frustrate the policy of that Act—merely held that amounts required to be paid for innocent violations were not penalties and that allowing deduction of such amounts would not frustrate the policy of that Act. The language upon which the taxpayer relies (Pet. 5) obviously refers only to the need for a determination as to each statute whether its policy would be frustrated by allowing deduction.

The taxpayer also contends (Pet. 7) that the doctrine of collateral estoppel has never been applied to bar relitigation of the same issue where in the prior litigation the issue was decided adversely to the party having the burden of proof. Where, as here, however, no shifting of the burden of proof between the two proceedings is involved, that contention is clearly without merit. See *Fairmont Aluminum Co.* v. *Commissioner,* 222 F. 2d 622 (C. A. 4th), certiorari denied, October 10, 1955, rehearing denied, November 21,

1955; *Lynch* v. *Commissioner,* 216 F. 2d 574 (C. A. 7th).

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.
H. BRIAN HOLLAND,
Assistant Attorney General.
LEE A. JACKSON,
JOSEPH F. GOETTEN,
Attorneys.

DECEMBER 1955.

U. S. GOVERNMENT PRINTING OFFICE: 1955